IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

| UNITED STATES OF AMERICA, |) | |
|---|------------------|--------------------------------|
| Plaintiff, |) | |
| v. |) | 8:16CR87 |
| VIRGIL APODACA, SR., VIRGIL APODACA, JR., ANTHONY APODACA, and JACK SEALS, |)))) | FINDINGS AND RECOMMENDATION |
| Defendants. |) | |

This matter is before the court on defendant's, Virgil Apodaca, Jr., motion (<u>Filing No.</u> <u>54</u>) to change the place of trial from Omaha to North Platte, Nebraska. For the reasons discussed below, the undersigned magistrate judge recommends granting the motion.

DISCUSSION

Under Rule 18 of the Federal Rules of Criminal Procedure, "[t]he court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice." Fed. R. Crim. P. 18. Although the district court has considerable discretion in determining the place of trial, "that discretion is contingent upon the court's consideration of the factors provided in Rule 18 when ruling on a proper motion for change of venue." *United States v. Stanko*, 528 F.3d 581, 586 (8th Cir. 2008).

The Indictment in this case alleges a conspiracy to distribute and possess with intent to distribute a mixture or substance containing methamphetamine occurring between April 2015 and October 2015 in violation of 21 U.S.C. § 846. (Filing No. 1). Counsel for Virgil Apodaca, Jr., avers that the discovery provided by the government reflects that "nearly all the events and witnesses pertaining to this case are located in or near North Platte, Nebraska." Additionally, defendant Virgil Apodaca, Sr. "has serious health concerns which make a trial in Omaha, Nebraska problematic." No transactions relating to the Indictment occurred in

Omaha, Nebraska, and no witnesses to the transactions referenced in the Indictment appear to

have any connection to Omaha, Nebraska. (Filing No. 55). The government objects to

changing the place of trial to North Platte due to the increased costs and financial burden to

United States taxpayers. (Filing No. 58). However, the court finds the increased costs to

the government does not outweigh the factors this court is to consider under Rule 18 when

determining the place of trial. Upon balancing the factors to be considered, for the

convenience of the defendant and witnesses, and in accordance with Rule 18 of the Federal

Rules of Criminal Procedure, the undersigned finds and recommends that this case be

transferred to the North Platte trial docket.

IT IS HEREBY RECOMMENDED to Chief District Court Judge Laurie Smith

Camp that defendant's, Virgil Apodaca, Jr., Motion for Change of Place of Trial (Filing No.

54) be granted.

ADMONITION

Pursuant to NECrimR 59.2, any party may object to a magistrate judge's order by filing

an objection within fourteen (14) days after being served with a copy of the findings and

recommendation. Failure to timely object may constitute a waiver of any objection.

DATED: May 20, 2016.

BY THE COURT:

s/ F.A. Gossett, III

United States Magistrate Judge